

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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NANCY JOHNSON, Guardian for TRACY  
JOHNSON, a Legally Incapacitated Person,

UNPUBLISHED  
January 24, 2003

Plaintiff-Appellee,

v

No. 238536  
Macomb Circuit Court  
LC No. 01-000507-NI

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant,

and

MACOMB COUNTY ROAD COMMISSION,

Defendant.

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Before: Cooper, P.J., and Bandstra and Talbot, JJ.

MEMORANDUM.

Defendant Department of Transportation appeals by leave granted from a circuit court order denying its motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action under the highway exception to governmental immunity. MCL 691.1402. Defendant asserted that plaintiff's claim was barred by immunity because she failed to plead facts showing that her claim fell within the scope of the exception. We review the trial court's ruling on a motion for summary disposition de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

A governmental agency having jurisdiction over a highway is liable in tort for breach of the duty to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). As applied to the state, the highway exception "extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel." MCL 691.1402(1).

Because immunity is a characteristic of government, the plaintiff must plead in avoidance of immunity by stating a claim that fits within a statutory exception. *Mack v Detroit*, 467 Mich

186, 203-204; 649 NW2d 47 (2002). In every case in which a plaintiff asserts a cause of action under the highway exception, the court is required to determine “whether the plaintiff has pleaded a cause of action in avoidance of governmental immunity,” and if the plaintiff has, whether the plaintiff established the elements of negligence. *Haliw v Sterling Heights*, 464 Mich 297, 304; 627 NW2d 581 (2001).

Plaintiff’s claim against defendant is predicated on inadequate traffic signals, inadequate lighting, lack of warning signs, negligent design of the intersection, and failure to redesign the intersection. Such allegations are beyond the scope of the highway exception. *Hanson v Mecosta Co Rd Comm’rs*, 465 Mich 492, 503; 638 NW2d 396 (2002); *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 183-184; 615 NW2d 702 (2000). Accordingly, we find that the trial court erred in denying defendant’s motion.

We reverse and remand with instructions to enter judgment for defendant on the ground that plaintiff’s claim is barred by governmental immunity. We do not retain jurisdiction.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot